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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 UNITED STATES OF AMERICA,

Case No. 2:18-cr-00001-MMD-CWH

7 Plaintiff,

ORDER

8 v.

9 IONUT BITERE, *et al.*,

10 Defendants.

11 **I. SUMMARY**

12 Defendants Ionut Bitere, Eugeniv-Florian Ciuca, and Oana Maria Serban were  
13 indicted on various counts related to an alleged Automated Teller Machine (“ATM”)  
14 skimming operation that Defendants carried out in the Las Vegas, Nevada area.  
15 Generally speaking, ATM skimming is a practice where ATM card information is gathered  
16 from unsuspecting bank customers through the use of small cameras and electronic  
17 magnetic strip recorders installed on ATMs—and then cash is withdrawn in those  
18 unsuspecting customers’ names. Defendants Ciuca and Serban moved to suppress  
19 certain pieces of evidence and statements (ECF Nos. 95, 96, 140), and Serban moved to  
20 join (“Serban’s Joinder”) a supplement to part of one of Ciuca’s motions to suppress (ECF  
21 No. 170). These motions were referred to Magistrate Judge Carl W. Hoffman. Judge  
22 Hoffman held a hearing on the motions to suppress (the “Hearing”).<sup>1</sup> (ECF No. 157.)  
23 Currently before the Court are Judge Hoffman’s reports and recommendations (“R&R(s)”)  
24 on these motions to suppress (ECF Nos. 186, 187), along with Ciuca and Serban’s  
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27 <sup>1</sup>Judge Hoffman admitted several exhibits into evidence at the Hearing. (ECF No.  
28 157.)

1 objections thereto (ECF Nos. 202, 203, 204).<sup>2</sup> Judge Hoffman denied Serban's Joinder  
2 and recommends denying the motions to suppress. (ECF Nos. 186, 187.) For the reasons  
3 discussed below, the Court will accept Judge Hoffman's recommendations, and Ciuca  
4 and Serban's motions to suppress evidence will accordingly be denied. The Court also  
5 affirms Judge Hoffman's decision to deny Serban's Joinder.

## 6 II. LEGAL STANDARD

7 Magistrate judges have authority to review and file findings and recommendations  
8 on matters referred by the district court, including motions to suppress evidence in a  
9 criminal case. LR IB 1-4(h). This Court "may accept, reject, or modify, in whole or in part,  
10 the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).  
11 Where a party timely objects to a magistrate judge's report and recommendation, then  
12 the court is required to "make a de novo determination of those portions of the [report and  
13 recommendation] to which objection is made." *Id.* The Court thus accepts the portions of  
14 Judge Hoffman's R&Rs to which Ciuca does not object and conducts a *de novo* review  
15 of the portions of the R&Rs to which either Ciuca or Serban objects.

16 With respect to Judge Hoffman's decision on Serban's Joinder, magistrate judges  
17 are authorized to resolve pretrial matters subject to district court review under a "clearly  
18 erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ.  
19 P. 72(a); L.R. IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a  
20 magistrate judge in a civil or criminal case pursuant to LR IB 1-3, where it has been shown

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23 <sup>2</sup>The Court also reviewed the government's responses to Defendants' objections.  
24 (ECF Nos. 209, 210, 212.) In addition, the Court granted Ciuca's request for leave to file  
25 a reply in support of his objection (ECF No. 213). (ECF No. 217.) Accordingly, the Court  
26 also reviewed Ciuca's reply. (ECF No. 220.) In addition, the government filed a response  
27 to Ciuca's request for leave to file a reply (ECF No. 214), which the Court also reviewed.  
28 The Court also reviewed the exhibits attached to all of the parties' briefing cited in this  
order.

1 that the magistrate judge's ruling is clearly erroneous or contrary to law."). A magistrate  
2 judge's pretrial order issued under 28 U.S.C. § 636(b)(1)(A) is not subject to *de novo*  
3 review, and the reviewing court "may not simply substitute its judgment for that of the  
4 deciding court." *Grimes v. City & County of San Francisco*, 951 F.2d 236, 241 (9th Cir.  
5 1991). Thus, the Court reviews Judge Hoffman's denial of Serban's Joinder under a clear  
6 error standard of review.

### 7 **III. BACKGROUND**

8 The Court relies on documents filed by the parties in support of their motions and  
9 related briefs, as well as the testimony from the Hearing, to construct this factual  
10 background. The Court notes any inconsistencies that may be material to its factual  
11 findings below.

#### 12 **A. Relevant Events**

13 The government alleges that all three Defendants entered the United States from  
14 Romania in September 2017 and embarked on an ATM-skimming spree over the course  
15 of fall 2017 that brought them from the Chicago, Illinois area to Las Vegas, Nevada, where  
16 they were apprehended. (ECF No. 212 at 2.) Following a report from a security manager  
17 at One Nevada Credit Union that the bank had found an ATM skimmer on one of its ATMs  
18 in Las Vegas, Detective M. Jogodka of the Las Vegas Metropolitan Police Department  
19 ("LVMPD") began investigating who placed the ATM skimmer. (ECF No. 212-3 at 2.) It  
20 was December 3, 2017. (*Id.*) The security manager provided Detective Jogodka with  
21 some photographs of the suspect who placed the skimmer and other information about  
22 the impacts of the ATM skimmer on December 4, 2017. (*Id.*) The suspect was driving a  
23 red Saturn sedan with an upside-down Illinois license plate. (*Id.* at 2-3.)

24 Detective Jogodka enlisted the help of officials at various other government  
25 agencies to learn who placed the ATM skimmer. He was also working on this ATM  
26 skimming case as part of a larger team of investigators. Through collaboration with this  
27 larger team, Detective Jogodka found out the red Saturn was registered to Mavromatis

1 Fotis. (*Id.* at 3.) Detective Jogodka also determined that a Mavromatis Fotis had rented a  
2 room at the Budget Suites on Tropicana Avenue in Las Vegas. (*Id.*) Then, Detective  
3 Jogodka got records from the Budget Suites that included copies of the passports of the  
4 people who had rented that room; Fotis from Greece and Serban, from Romania. (*Id.*;  
5 see also ECF No. 214-2.) The Budget Suites records also noted that Fotis and Serban's  
6 vehicle was a 2005 Volkswagen Tiguan. (*Id.*) But the photographs of Mavromatis Fotis  
7 on the photocopy of the Greek passport from the Budget Suites did not match other  
8 records for Mavromatis Fotis. (ECF No. 214-4.) Customs and immigration officials  
9 matched the photograph of Mavromatis Fotis from the Greek passport with other  
10 photographs in their records, and determined that 'Mavromatis Fotis' was actually Ciuca,  
11 also from Romania. (ECF No. 212-3 at 3-4.) They communicated this information to  
12 Detective Jogodka.

13         Investigators saw the red Saturn in the parking lot of the Excalibur Hotel-Casino at  
14 10:40 a.m. on December 5, 2017. (*Id.* at 6.) Investigators reached out to the security staff  
15 at the Excalibur and were able to use surveillance video footage to follow the man who  
16 got out of the red Saturn (who looked like the man in the photographs from the bank) all  
17 the way to room 25-217. (*Id.*) Excalibur records revealed that room 25-217 was registered  
18 to Bitere. (*Id.* at 6-7.) Excalibur records further revealed that room 16-240 was registered  
19 to Ciuca; Bitere made the reservation for him. (*Id.*)

20         Other investigators continued to stake out the Budget Suites. Around 11:30 a.m.,  
21 Serban and Bitere showed up in the Tiguan at the office of the Budget Suites, seeking  
22 the deposit for the room rented to Mavromatis Fotis and Serban. (*Id.* at 7.) Bitere was still  
23 wearing the same outfit he was wearing in the surveillance footage from the bank and the  
24 Excalibur. (*Id.*) Bitere and Serban retrieved the deposit. (*Id.*) Then they got back in the  
25 Tiguan and left. (*Id.*) Investigators tailed them to a Money Tree cash transfer business.  
26 Investigators arrested both Bitere and Serban as they stood at the counter of the Money  
27 Tree attempting to transfer \$1000 to Romania; a phone laying on the counter displayed

1 instructions on where to wire the money. (*Id.*) The investigators detained Bitere but let  
2 Serban go.

3         Meanwhile, other investigators were working with the security staff at the Excalibur.  
4 As relevant to the pending motions, Detective Jogodka appears to have been mostly  
5 directing the operations at the Excalibur, and his primary collaborator from Excalibur  
6 security was Alan Whitty. (ECF No. 212-1 at 2.) As explained and analyzed in more detail  
7 below, over the course of the afternoon of December 5, 2018, investigators got Ciuca to  
8 leave his room at the Excalibur, handcuffed him, and detained him in an Excalibur security  
9 office. (*Id.*) Detective Jogodka also got a telephonic search warrant from a Nevada state  
10 judge to search both Ciuca's room (room number 16-240), and Bitere's room (room  
11 number 25-217), along with the red Saturn in the parking lot (the "Excalibur Warrant").  
12 (ECF No. 212-3.) Just before Detective Jogodka was going to execute the search warrant  
13 on Ciuca's room, Serban showed up at the Excalibur. (ECF No. 212-1 at 2-3.)  
14 Investigators detained her and took her to the Excalibur security office where they were  
15 also holding Ciuca. (*Id.* at 3.) Jogodka executed the Excalibur Warrant later that  
16 afternoon, searching both hotel rooms and the red Saturn. Investigators found more than  
17 \$40,000 in cash, ATM-skimming-related equipment, handwritten lists that appeared to  
18 consist of debit card numbers, electronics, and clothes in the two Excalibur hotel rooms  
19 and the red Saturn. (ECF No. 204-1 at 193-194.) Later in the afternoon of December 5,  
20 2017, investigators took Ciuca and Serban to join Bitere at the Clark County jail. (ECF  
21 No. 212-1 at 3.)

22         As their investigation continued, investigators obtained several additional warrants  
23 to access various electronic devices and online accounts that appeared to be controlled  
24 by the three Defendants. (ECF No. 210 at 3.) One of those warrants was for a Yahoo!  
25 email account, [Edelyn\\_marya@yahoo.com](mailto:Edelyn_marya@yahoo.com), which appeared to be controlled by Serban  
26 (the "Yahoo Warrant"). (ECF No. 210-1.)

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1 Excalibur's security office. (*Id.*) However, Ciuca says that investigators handcuffed him  
2 inside the room, then made him stand there for a few minutes while investigators  
3 searched his room, and picked up a phone and his wallet from a night stand. (ECF No.  
4 204 at 4-6.) This, Ciuca argues, was a warrantless search that yielded at least the phone  
5 and the wallet from the nightstand. (*Id.* at 6.) The government responds that the phone  
6 and wallet were found on Ciuca's person, not elsewhere in the room, and that no  
7 warrantless search of room 16-240 occurred at the time investigators handcuffed Ciuca.  
8 (ECF No. 212 at 6-14.)

## 9 **2. The Alleged Warrantless Search at 2:08 p.m.**

10 Ciuca further argues that a second warrantless search of room 16-240 occurred  
11 around 2:08 p.m. on December 5, 2017. (ECF No. 204 at 8-11.) As support, Ciuca points  
12 to internal records from the Excalibur, specifically something called the Lock Interrogation  
13 Report ("LIR"), which consists of automated records showing when the door of room 16-  
14 240 was opened and closed. (*Id.* at 9-10.) To show the interaction between the LIR and  
15 other evidence before the Court, the Court has constructed the timeline below. It shows  
16 the events of December 5, 2017 as relevant to room 16-240 and the pertinent activities  
17 within the Excalibur Hotel more generally.<sup>3</sup> The timeline does not include all the entries in  
18 the LIR. (ECF No. 204-1 at 196-209.)

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Time	Event	Source
8:38 a.m.	The door to room 16-240 is opened from the outside by Eugeniu Florian [Ciuca].	LIR (ECF No 204-1 at 199.)
9:17 a.m.	The door to room 16-240 is opened from the outside by Eugeniu Florian [Ciuca].	LIR (ECF No 204-1 at 199.)

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24 <sup>3</sup>Key to color coding in the timeline table. Orange = Lock Interrogation Report (ECF  
25 No. 204-1 at 196-209). Black = Excalibur Incident Report ("EIR") (ECF Nos. 212-1, 204-  
26 1 at 143-175). Blue = LVMPD Arrest Report completed by Detective Jogodka (ECF No.  
27 204-1 at 190-194). Green = Hearing Transcript (ECF No. 204-1 at 1-141). Yellow =  
LVMPD Property Report (ECF No. 212-2). Light Blue = LVMPD Application for Telephonic  
Search Warrant, Event # LLV171205000525 (ECF No. 212-3).

Time	Event	Source
12:04-05 p.m.	The door to room 16-240 is opened from the inside and then closed.	LIR (ECF No. 204-1 at 198.)
12:18 p.m.	Jogodka contacts Excalibur security for help investigating ATM skimmers. Excalibur Security Officer Alan Whitty primarily helps him.	EIR (ECF No. 212-1 at 2; 204-1 at 144.)
12:34 p.m.	Readout done (obtaining door opening records) for door to room 16-240.	LIR (ECF No. 204-1 at 198.)
12:39 p.m.	Whitty knocks on door of room 16-240, Ciuca opens door, someone (or several people) from LVMPD enter(s) and handcuff(s) Ciuca.	EIR (ECF No. 212-1 at 2; 204-1 at 144.)
12:43 p.m.	Jogodka writes in his arrest report that "contact was made with" Ciuca, and Ciuca was told he had to stay out of his room 16-240 until LVMPD could execute the search warrant.	LVMPD Arrest Report (ECF No. 204-1 at 192.)
12:49 p.m.	Whitty knocks on door of room 27-215 (registered to Bitere) and enters the room when nobody responds.	EIR (ECF No. 212-1 at 2; 204-1 at 144.)
12:49 p.m.	Security officers escorting Ciuca arrive at Excalibur security office (on first floor) with Ciuca.	Hearing Transcript (ECF No. 204-1 at 12-14.)
12:50 p.m.	Security officers escorting Ciuca arrive at Excalibur security office (on first floor) with Ciuca.	EIR (ECF No. 212-1 at 2; 204-1 at 144.)
2:08 p.m.	The door to room 16-240 is opened with a staff card (Alan Whitty) after initial failed reading, door is then closed.	LIR (ECF No. 204-1 at 197-8.)
2:13 p.m.	The door to room 16-240 opened from the inside, and then left open.	LIR (ECF No. 204-1 at 197.)
2:13-2:30 p.m.	Jogodka gets search warrant for both hotel rooms and the Saturn from state court judge over the phone. Jogodka sworn in and starts call at 2:13 p.m. Judge grants warrant, and warrant is witnessed at 2:30 p.m.	EIR (ECF No. 212-1 at 2; 204-1 at 144); LVMPD Application for Telephonic Search Warrant, Event # LLV171205000525 (ECF No. 212-3.)
Approx. 2:30 p.m.	Serban returns to Excalibur after having been detained but then released by LVMPD at Money Tree with Bitere, where Bitere was arrested.	EIR (ECF No. 212-1 at 2-3; 204-1 at 144-145.)
Approx. 2:37 p.m.	Jogodka executes search warrant on room 16-240.	LVMPD Arrest Report (ECF No. 204-1 at 193.)
2:45 pm.	The door to room 16-240 is closed, opened from the inside, and then closed again.	LIR (ECF No. 204-1 at 197.)
2:47 p.m.	Jogodka executes search warrant on room 16-240 according to EIR.	EIR (ECF No. 212-1 at 3; 204-1 at 145.)
2:47 p.m.	Jogodka executes search warrant on room 16-240 according to metadata in photos presented at hearing, which Jogodka testified he took at the time he entered the room; the photos and metadata were admitted into evidence at the hearing.	Hearing Transcript (ECF No. 204-1 at 77-82.)



Time	Event	Source
2:58 p.m.	Room 16-240 opened with staff card (Ring 23 Security) after initial failed reading.	LIR (ECF No. 204-1 at 197.)
3 p.m.	Time listed in LVMPD property report for the collection of the items taken from the Money Tree, the two hotel rooms, the VW Tiguan, and the Saturn.	LVMPD Property Report (ECF No. 212-2.)
3:12pm	Security officers escorting Serban arrive at Casino Security Office – Two.	EIR (ECF No. 212-1 at 3; 204-1 at 145.)
3:14pm	LVMPD officers take Serban from Casino Security Office – Two for transport to Clark County Detention.	EIR (ECF No. 212-1 at 3; 204-1 at 145.)
3:27pm	LVMPD executes warrant and searches room 25-217 (registered to Bitere).	EIR (ECF No. 212-1 at 3; 204-1 at 145.)
3:28pm	LVMPD executes warrant and searches room 25-217 (registered to Bitere).	LVMPD Arrest Report (ECF No. 204-1 at 193.)
3:30pm	Security officers dispatched to help LVMPD escort Ciuca from Casino Security Office - One to Clark County detention.	EIR (ECF No. 212-1 at 3; 204-1 at 145.)
3:30pm	Security officers assigned to inventory items not seized by LVMPD in the two rooms conduct that inventory, take items to lost and found.	EIR (ECF No. 212-1 at 3; 5; 204-1 at 145, 147.)
3:47pm	Jogodka and team execute search warrant on red Saturn.	EIR (ECF No. 212-1 at 3; 204-1 at 145); see also LVMPD Arrest Report (ECF No. 204-1 at 193.)

#### **D. Procedural Background**

Ciuca filed two motions to suppress evidence collected against him in this case: one to suppress statements he made to LVMPD Detective Garrett, while sitting with him in the Excalibur security office for several hours on the afternoon of December 5, 2017 (ECF No. 96); and the other to suppress evidence collected pursuant to the Excalibur Warrant (ECF No. 95). Judge Hoffman recommended denying Ciuca's motion to suppress statements (ECF No. 96) in one of his R&Rs (ECF No. 186 at 9-11), and Ciuca does not object to that finding by Judge Hoffman (ECF No. 104 at 1). Thus, the Court adopts Judge Hoffman's recommendation and will deny Ciuca's motion to suppress statements (ECF No. 96).

Judge Hoffman also denied Ciuca's motion to suppress evidence (ECF No. 95), where Ciuca argued, as outlined above and further discussed below, that the Excalibur Warrant was not supported by probable cause, and that two warrantless searches of

1 Excalibur room 16-240 occurred before Detective Jogodka obtained the Excalibur  
2 Warrant. (ECF No. 186 at 2-9 (denying Ciuca's motion to suppress).) Judge Hoffman had  
3 also permitted Serban to join Ciuca's motion to suppress. (ECF Nos. 101, 117.) Ciuca  
4 objected to Judge Hoffman's denial of his motion to suppress evidence. (ECF No. 204.)  
5 Ciuca also requested a hearing on the Excalibur Warrant pursuant to *Franks v. Delaware*,  
6 438 U.S. 154 (1978) in his objection. (*Id.* at 14.) Serban also joined, albeit in a conclusory  
7 fashion, Ciuca's objection. (ECF No. 202 at 2.) Thus, while the Court agrees with Judge  
8 Hoffman and will accept his recommendation to deny Ciuca's motion to suppress  
9 evidence (ECF No. 95) in his R&R (ECF No. 186), the Court has conducted a *de novo*  
10 review of the record and explains its reasoning in more detail below.

11 Further, after the Hearing, Ciuca filed a motion to supplement (ECF No. 168) his  
12 earlier motion to suppress statements (ECF No. 96), relying on the security video of  
13 Ciuca's temporary detention in the Excalibur's security room to suppress additional  
14 statements. Serban moved to join that motion (ECF No. 163), although she had not  
15 moved to join Ciuca's original motion to suppress statements. (ECF No. 186 at 11.) Judge  
16 Hoffman granted both motions and directed Ciuca to include specific citations to the time  
17 stamp on the security video to support the additional statements that Ciuca seeks to  
18 suppress. (ECF No. 165 at 2.) Ciuca then filed the supplement of his motion to suppress  
19 statements ("the Supplement") (ECF No. 168); and Serban filed her Joinder (ECF No.  
20 170). Judge Hoffman denied Serban's Joinder. (ECF No. 186. at 11-12.) Serban objects  
21 to Judge Hoffman's denial of her Joinder. (ECF No. 202.) Thus, the Court will also address  
22 Serban's objection in more detail below.

23 Finally, Serban moved to suppress any evidence seized from the  
24 [edelyn\\_marya@yahoo.com](mailto:edelyn_marya@yahoo.com) email account pursuant to the Yahoo Warrant. (ECF No.  
25 140.) There, she argued that the Yahoo Warrant was not supported by sufficient probable  
26 cause. (*Id.*) Judge Hoffman recommends denying her motion. (ECF No. 187.) Serban  
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1 objects to that denial.<sup>4</sup> (ECF No. 203.) Thus, while the Court also agrees with Judge  
2 Hoffman that the Yahoo Warrant was supported by sufficient probable cause, it has  
3 conducted a *de novo* review of the record and will explain its decision to adopt Judge  
4 Hoffman's R&R (ECF No. 187) in more detail below.

#### 5 **IV. DISCUSSION**

6 Having conducted a *de novo* review of the record pertinent to the portions of Judge  
7 Hoffman's R&Rs that Ciuca and Serban object to, the Court will adopt Judge Hoffman's  
8 recommendations for the reasons provided below. The Court's analysis is organized by  
9 issue.

##### 10 **A. The Challenged Warrants**

11 In their objections to the R&Rs, Ciuca argues that the Excalibur Warrant was not  
12 supported by probable cause (ECF No. 204 at 11-13), and Serban argues that the Yahoo  
13 warrant was not supported by probable cause (ECF No. 203). The government responds  
14 that the affidavits submitted in support of the applications for both warrants contained  
15 ample facts from which the issuing Judges reasonably found that Excalibur room 16-240  
16 and the [edelyn\\_marya@yahoo.com](mailto:edelyn_marya@yahoo.com) email account were likely to contain evidence of an  
17 ATM skimming scheme—and thus both warrants were supported by probable cause.  
18 (ECF Nos. 210 at 6-12, 212 at 21-28.) The Court agrees with the government.

19 “Probable cause to search exists when the known facts and circumstances are  
20 sufficient to cause a reasonable person to conclude that contraband or evidence of a  
21 crime will be found.” *United States v. Ibarra*, 345 F.3d 711, 716 (9th Cir. 2003) (citation  
22 omitted). There must be a “‘fair probability’ that contraband or evidence is located in a  
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24 <sup>4</sup>Serban originally requested an evidentiary hearing in her motion to suppress  
25 (ECF No. 140), which Judge Hoffman denied (ECF No. 187 at 5-6). In her objection to  
26 Judge Hoffman's R&R denying her motion to suppress, Serban withdrew her request for  
27 an evidentiary hearing on whether the Yahoo Warrant was sufficiently supported by  
28 probable cause. (ECF No. 203 at 7.) Thus, Serban's request for an evidentiary hearing  
on the Yahoo Warrant is now moot.

1 particular place.” *United States v. Kelley*, 482 F.3d 1047, 1050 (9th Cir. 2007) (quoting  
2 *Illinois v. Gates*, 462 U.S. 213, 246 (1983)). The “fair probability” inquiry is a  
3 “commonsense, practical question” that is based on the totality of the circumstances,  
4 including reasonable inferences. *Id.* (quoting *United States v. Gourde*, 440 F.3d 1065,  
5 1069 (9th Cir. 2006)).

6 When examining a challenged search warrant, a judge’s probable cause  
7 determination is accorded “significant deference,” *United States v. Gil*, 58 F.3d 1414,  
8 1418 (9th Cir. 1995), and will be overturned only if it is “clearly erroneous,” *United States*  
9 *v. Stanert*, 762 F.2d 775, 779 (9th Cir. 1985). In making this determination, the court is  
10 “limited to the information and circumstances contained within the four corners of the  
11 underlying affidavit.” *Id.* at 778. The duty of a reviewing court is to ensure that the  
12 magistrate judge had a “substantial basis” for concluding that probable cause existed.  
13 *Gates*, 462 U.S. at 238-39 (internal quotations omitted).

14 The Court addresses each of the two challenged warrants, in turn, below.

#### 15 **1. The Excalibur Warrant**

16 The Court finds that the Excalibur Warrant was supported by probable cause.  
17 Thus, it will overrule Ciuca and Serban’s objections and accept Judge Hoffman’s  
18 recommendation with respect to the Excalibur Warrant, denying the applicable motion to  
19 suppress.

20 Detective Jogodka spent seventeen minutes on the phone with Nevada state  
21 Judge Diana Sullivan to obtain the Excalibur Warrant, a conversation corresponding to  
22 an eleven page affidavit when transcribed. (ECF No. 212-3.) As transcribed, Detective  
23 Jogodka’s conversation with Judge Sullivan contained sufficient facts such that she  
24 reasonably could have concluded there was a fair probability that contraband or evidence  
25 would be found in room 16-240 of the Excalibur. At the least, Judge Sullivan’s decision to  
26 issue the Excalibur Warrant was not clearly erroneous.

1 In his oral affidavit, Detective Jogodka explained that he had determined Ciuca  
2 was the registered owner of the red Saturn that had been captured facilitating ATM  
3 skimming on surveillance footage of an ATM in which Detective Jogodka had also found  
4 an ATM skimmer. (*Id.* at 2-3.) Further, Detective Jogodka explained that Ciuca had  
5 registered the red Saturn using the fake identity of Mavromatis Fotis. (*Id.* at 2-4.) Thus, it  
6 was reasonable that Detective Jogodka was looking for Ciuca—he appeared to be  
7 connected to the ATM skimming, and the fact that he registered the car used for the ATM  
8 skimming to a fake identity raises an additional red flag suggesting that Ciuca was up to  
9 something.

10 Detective Jogodka also offered Judge Sullivan sufficient facts connecting Ciuca to  
11 room 16-240 at the Excalibur, and explained why he suspected that evidence related to,  
12 and/or the fruits from, the ATM skimming scheme may be in that hotel room. Detective  
13 Jogodka explained that the ATM skimmers who were using the red Saturn—a car  
14 registered to Ciuca—likely had made off with \$28,000 from One Nevada Credit Union  
15 alone. (*Id.* at 4.) He further explained that other investigators had located the red Saturn  
16 in the parking lot of the Excalibur earlier that morning. (*Id.* at 6.) He also explained that  
17 he collaborated with hotel security to learn, by piecing together surveillance footage, that  
18 the person driving the red Saturn was staying in the Excalibur room 25-217. (*Id.*) A search  
19 of the Excalibur's records revealed that Ciuca also had a room at the Excalibur—room  
20 16-240—and that room had been rented for Ciuca by the person who got out of the red  
21 Saturn, who turned out to be Bitere. (*Id.* at 6-9.) Thus, it was reasonable for Judge Sullivan  
22 to conclude that Ciuca was somehow involved with this suspected ATM-skimming  
23 scheme, and that cash, ATM skimming devices, or other evidence may be in room 16-  
24 240 of the Excalibur. In addition, the affidavit contained other facts not specifically  
25 discussed here, which arguably add further support for Judge Sullivan's probable cause  
26 finding.

1 The Court therefore finds Judge Sullivan was not clearly erroneous in granting the  
2 Excalibur Warrant, and overrules Ciuca and Serban's objections to Judge Hoffman's R&R  
3 with respect to the Excalibur Warrant.

## 4 **2. The Yahoo Warrant**

5 The Court also finds that the Yahoo Warrant was supported by probable cause.  
6 Thus, it will overrule Serban's objection and accept Judge Hoffman's recommendation  
7 with respect to the Yahoo Warrant, denying the applicable motion to suppress.<sup>5</sup>

8 The 37 page affidavit submitted by FBI Special Agent Buel in support of his  
9 application for the Yahoo Warrant contained sufficient facts such that Judge Hoffman  
10 reasonably could have concluded there was a fair probability that evidence relevant to  
11 the ATM-skimming-scheme at issue here would be found somewhere in the content of  
12 the applicable email account. (ECF No. 210-1.) At the least, Judge Hoffman was not  
13 clearly erroneous in signing the warrant.

14 From the factual information contained in the affidavit submitted in support of the  
15 application for the Yahoo Warrant, it was reasonable for Judge Hoffman to conclude both  
16 that Serban was involved in the ATM-skimming scheme, and more evidence related to it  
17 would likely be found in the email account that was the subject of the Yahoo Warrant. (*Id.*)  
18 Agent Buel begins by explaining his relevant experience and training, the crimes he is  
19 investigating, and the reasons for his general knowledge that people engaged in ATM-  
20 skimming often used shared access to online accounts to carry out ATM-skimming  
21 schemes. (*Id.* at 1-14.) He then explains why investigators believed that Serban was an  
22 active participant in the ATM-skimming operation at issue here, including that Serban was  
23 registered as staying in the same room at the Budget Suites as Mavromatis Fotis (Ciuca's

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26 <sup>5</sup>The Court notes that Judge Hoffman both signed the Yahoo Warrant and issued  
27 the applicable R&R. Thus, the Court refers to Judge Hoffman throughout this section  
28 IV.A.2.

1 fake identity, who was also the registered owner of the red Saturn seen in ATM  
2 surveillance videos) (*Id.* at 16), Serban went back to collect the deposit from the Budget  
3 Suites with Bitere and was then detained at a Money Tree with a fair amount of cash on  
4 her (*Id.* at 18), and another \$5000 cash was found in her luggage in her room at the  
5 Excalibur (and the room also contained other indicia of ATM-skimming) (*Id.* at 18-19).

6 Agent Buel next explains how he determined from Bitere's phone<sup>6</sup> that Bitere was  
7 communicating with Ciuca about the ATM skimming using WhatsApp, and they were  
8 sharing an email account—which tends to show this was a method that the alleged co-  
9 conspirators used. (*Id.* at 22-30.) He then explains why he thinks that Bitere was also  
10 communicating in a similar fashion with Serban, and why he suspects they are sharing  
11 information about their ATM-skimming operation in the Yahoo! email account that is the  
12 subject of the Yahoo Warrant. (*Id.* at 30-25.) The Court finds that all of these facts, as  
13 presented in the applicable affidavit, add up to a reasonable probability that evidence  
14 regarding the ATM skimming scheme would be found in this email account.

15 The Court therefore finds Judge Hoffman was not clearly erroneous in granting the  
16 Yahoo Warrant and overrules Serban's objection to Judge Hoffman's R&R with respect  
17 to the Yahoo Warrant.

18  
19 **B. Whether Any Warrantless Searches of Excalibur Hotel Room 16-240  
Occurred**

20 Ciuca further argues that any evidence found in Excalibur Hotel room 16-240  
21 should be suppressed because two warrantless searches of that hotel room occurred  
22 before the room was search by a team led by Detective Jogodka pursuant to the Excalibur  
23 Warrant. (ECF No. 204 at 3-11.) The government responds that the Court should adopt  
24 Judge Hoffman's recommendation that neither search occurred, because the evidence

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26 <sup>6</sup>Agent Buel had access to this phone pursuant to a previously-issued warrant.  
27 (ECF No. 220-1 at 22.)

1 does not support Ciuca's argument that either search occurred. (ECF No. 212 at 6-19.)  
2 For the reasons explained below, the Court agrees with the government. The Court will  
3 address each of the two alleged searches separately.

#### 4 **1. The Alleged Search When Ciuca Was Arrested**

5 Ciuca argues that a warrantless search of room 16-240 occurred somewhere  
6 between 12:39 and 12:50 p.m. on December 5, 2017, right after he was handcuffed by  
7 investigators, after he opened the door to that hotel room in response to a knock from  
8 Excalibur security officer Whitty. (ECF No. 204 at 3-8.) Ciuca says that right after he was  
9 handcuffed, LVMPD Detective Garret and other investigators took a look around room  
10 16-240, picked up some cash from an open suitcase, commented on the cash, and picked  
11 up one of Ciuca's phones and his wallet from a nightstand. (*Id.* at 3.) As evidence this  
12 happened, Ciuca points to surveillance video from the Excalibur's security office (on a  
13 different floor of the hotel), where Detective Garret can be seen with the phone and wallet  
14 he allegedly took from Ciuca's room in his hands. (*Id.* at 3-4.) Ciuca further points to some  
15 unclear testimony from Detective Garret and Whitty as evidence that a warrantless search  
16 occurred. (*Id.* at 4-6.)

17 The government responds that Detective Garret took the phone and wallet off  
18 Ciuca's person, as part of a pat-down search incident to arrest. (ECF No. 212 at 10-12.)  
19 More generally, the government argues that no warrantless search of room 16-240  
20 occurred around the time Ciuca was handcuffed. (*Id.* at 6-14.) The Court agrees with the  
21 government because the evidence favors the government's argument.

22 The government proffers several persuasive pieces of evidence in support of its  
23 argument that no warrantless search of room 16-240 occurred around the time Ciuca was  
24 handcuffed—which the Court finds determinative in finding no such search occurred.  
25 First, the government presented three witnesses at the Hearing—Detectives Jogodka and  
26 Garret, and Excalibur security officer Whitty—and all three testified that no warrantless  
27 searches of room 16-240 occurred. (*Id.* at 6.) Second, the EIR does not present the clear



1 chronology that Ciuca relies on to argue a search occurred and therefore does not support  
2 his argument. (ECF No. 212-1 at 2.) Third, the LVMPD Property Report presumably  
3 completed by Detective Jogodka soon after the relevant events of December 5, 2017  
4 states that the items Ciuca relies on to show a warrantless search occurred were found  
5 on Ciuca's person. (ECF No. 212-2.) Fourth, Detective Garret testified at the Hearing that  
6 he took those items—a phone and Ciuca's wallet—from Ciuca's person. (ECF No. 212 at  
7 11.) Fifth, Ciuca neither presented an affidavit nor testified at the Hearing regarding his  
8 version of what happened around the time he was handcuffed, leaving the government's  
9 more persuasive evidence unrebutted. (*Id.* at 9-10.)

10 In sum, the Court finds the pertinent evidence shows that no search occurred  
11 around the time Ciuca was handcuffed in the early afternoon of December 5, 2017. Thus,  
12 the Court will accept Judge Hoffman's recommendation on this point and deny Ciuca and  
13 Serban's related motions.

## 14 **2. The Alleged Search at 2:08 p.m.**

15 Ciuca also argues that a warrantless search of Excalibur Hotel room 16-240  
16 occurred sometime between 2:08 and 2:30 p.m. on December 5, 2017. (ECF No. 204 at  
17 8-11.) His primary piece of evidence is the LIR, which shows that Excalibur security officer  
18 Whitty opened the door to Room 16-240 at 2:08 p.m. (*Id.* at 9; *see also* Table, *supra*  
19 Section III.C.2.) The LIR further shows that the door to room 16-240 was opened from the  
20 inside at 2:13 p.m., and then left open until 2:45 p.m. (Table, *supra* Section III.C.2.) Ciuca  
21 explains that, conceivably, Detective Jogodka could have been walking around in the  
22 room from 2:08 to 2:13 p.m., when he went out in the hall to call Judge Sullivan to get the  
23 Excalibur Warrant. (ECF No. 204 at 10.) Ciuca further points to some of Whitty's  
24 testimony, and takes issue with some of Judge Hoffman's reasoning in the applicable  
25 R&R, where Judge Hoffman found the LIR to be unreliable. (*Id.* at 9-10.) The government  
26 responds that the rest of the evidence presented on this point shows that the LIR was  
27

1 unreliable, and therefore Judge Hoffman was correct to discredit it. (ECF No. 212 at 15-  
2 19.)

3       The Court finds that Judge Hoffman got the right result—the LIR is unreliable, and  
4 thus there is no evidence that a warrantless search of room 16-240 occurred sometime  
5 after 2:08 p.m. First, the LIR shows that the door to room 16-240 remained closed from  
6 12:05 p.m. until 2:08 p.m. But there is no genuine dispute that Ciuca was taken out of the  
7 room in handcuffs during that time, in part because the undisputed surveillance footage  
8 from the Excalibur security office shows Ciuca being escorted in at 12:50 p.m. (ECF No.  
9 212 at 19.) The door to room 16-240 must have been opened for that to happen. Thus,  
10 the LIR was inaccurate at least once during the afternoon of December 5, 2017. And while  
11 Ciuca argues that the ‘read-out’ shown in the LIR at 12:34 p.m. is consistent with  
12 investigators arriving shortly after that to handcuff Ciuca, Ciuca does not—and cannot—  
13 argue that the LIR shows the door to room 16-240 was opened when it was indisputably  
14 opened: when Ciuca was taken out of it and handcuffed. Second, as noted above,  
15 Detectives Jogodka and Garret, and Excalibur security officer Whitty, all testified that no  
16 warrantless search occurred. (ECF No. 212 at 6.) Third, both Detective Jogodka and  
17 Whitty testified that, in their experience, LIRs are generally unreliable. (*Id.* at 17-19.)  
18 Fourth, the government presented photographs with corresponding metadata that tended  
19 to show room 16-240 was undisturbed at 2:47 p.m., and that no warrantless search  
20 occurred before that time. (*Id.* at 15-17.) And while Ciuca raises a cursory challenge to  
21 the accuracy of the photos and their metadata in his briefing (ECF No. 204 at 10), he  
22 raised no such challenge at the Hearing when such evidence was introduced. (ECF No.  
23 212 at 15-17.)

24       Further, why would Detective Jogodka conduct a warrantless search of room 16-  
25 240 just after 2:08 p.m.? Ciuca does not need to answer that question, but the logical  
26 answer is that Detective Jogodka had no need to. He had already identified the room and  
27 secured it. He was already preparing to get a search warrant to search the room. (ECF

1 No. 204-1 at 72-75.) None of the information he presented in support of his application  
2 for the search warrant referenced the contents of the room—and the Court agrees the  
3 affidavit contained enough factual information to support a probable cause finding. (ECF  
4 No. 212-3; see also *supra* Section IV.A.1.) And Ciuca has not even alleged that Detective  
5 Jogodka took anything from the room during this alleged warrantless search, so it is not  
6 entirely clear what Ciuca is trying to suppress. (ECF No. 204) Overall, in addition to the  
7 evidence favoring the finding that the LIR was unreliable and no warrantless search  
8 occurred just after 2:08 p.m., it makes little sense that such a search would have occurred.

9 On these facts, the Court agrees with Judge Hoffman that the LIR was unreliable,  
10 and the government offered evidence showing that no warrantless search of room 16-  
11 240 occurred sometime after 2:08 p.m. The Court accepts Judge Hoffman's  
12 recommendation and overrules Ciuca and Serban's corresponding objections.

### 13 **C. Serban's Joinder and Objection to Judge Hoffman's Denial**

14 Serban's Joinder and objection must be viewed in connection with Judge  
15 Hoffman's recommendations as to Ciuca's filings.<sup>7</sup> Judge Hoffman recommended that  
16 Ciuca's motion to suppress (ECF No. 96) and Ciuca's Supplement (ECF No. 168) be  
17 denied for two reasons. First, Judge Hoffman found the motion and Supplement to be  
18 moot with respect to all but Ciuca's statement as to "bank fraud" because the government  
19 indicated it would not seek to introduce the other statements as part of its case in chief.  
20 (ECF No. 186 at 9.) Second, Judge Hoffman found that the absence of *Miranda*<sup>8</sup> warnings

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22 <sup>7</sup>The procedural posture of Serban's objection is odd because Ciuca did not object  
23 to Judge Hoffman's denial of his underlying motion—and Serban was attempting to join  
24 a supplement to that motion. Nevertheless, the Court will address the merits of Serban's  
25 objection.

26 <sup>8</sup>The Supreme Court established in *Miranda v. Arizona* that law enforcement  
27 officers must provide warnings to individuals who are in custody in order to combat the  
28 inherently compelling pressures of custodial interrogation. 384 U.S. 436, 467 (1966).

1 did not violate Ciuca's Fifth Amendment rights to support suppression of Ciuca's "bank  
2 fraud" statement because Ciuca was not subject to interrogation when he volunteered the  
3 statement. (*Id.* at 11.) Ciuca did not object to Judge Hoffman's recommendations.  
4 Accordingly, the Court adopts Judge Hoffman's recommendations and denies Ciuca's  
5 motion to suppress his statements (ECF No. 96).<sup>9</sup>

6 Judge Hoffman denied Serban's Joinder based on her failure to provide "points  
7 and authorities to support the joinder, and [for raising] arguments regarding prejudice for  
8 the for the first time on reply." (ECF No. 186 at 12.) Serban's objection (ECF No. 202)  
9 reiterates her claim of prejudice raised in her reply in support of her Joinder (ECF No.  
10 170). Serban cannot and does not argue that the government obtained Ciuca's  
11 statements in violation her constitutional rights. Serban instead argues that she is seeking  
12 "exclusion-relief [] because of the prejudicial impact of [Ciuca's] statements if admitted."<sup>10</sup>  
13 Serban does not elucidate on this point in her objection any more than she did in her reply  
14 to her Joinder. In any event, Serban's arguments—as best the Court can discern—are  
15 tenuous. First, she seeks "exclusion-relief" but asked to join essentially in a motion to  
16 suppress, not exclude, Ciuca's statement. Second, she cites to Rule 14(a) of the Federal  
17 Rules of Criminal Procedure and Rule 403 of the Federal Rules of Evidence, but fails to  
18 provide any analysis under either rule—both of which go to admissibility, not suppression.  
19 Rule 14(a) permits the court to order separate trials or "provide any other relief that justice  
20 requires" if joinder of multiple defendants "appears to prejudice a defendant or the

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23 <sup>9</sup>Moreover, the Court agrees with Judge Hoffman that Ciuca's "bank fraud"  
24 statement was volunteered during the course of casual conversation with Detective  
25 Garrett, which did not amount to interrogation to trigger the safeguards included in  
26 *Miranda* warnings.

27 <sup>10</sup>Serban's objection references Ciuca's statements, but the only statement as  
28 issue is Ciuca's "bank fraud" statement since that is the statement the government seeks  
to introduce as part of its case in chief. The Court therefore will only address Serban's  
objection as it relates to that statement.

1 government.” Fed. R. Crim. P. 14(a). Serban appears to suggest that the “other relief that  
2 justice requires” is to exclude Ciuca’s statement. However, whether admitting Ciuca’s  
3 statement of “bank fraud” would present the potential of unfair prejudice to Serban to  
4 warrant any relief under Rule 14 or even Rule 403 are matters that Serban can raise at  
5 trial and the Court can better address in the context of trial. Accordingly, the Court agrees  
6 with Judge Hoffman’s decision to deny Serban’s Joinder.

7 **D. Ciuca’s Request for a Franks Hearing**

8 Finally, Ciuca notes in passing towards the conclusion of his objection to the  
9 applicable R&R that he requests a hearing under *Franks v. Delaware*, 438 U.S 154 (1978)  
10 to challenge the Excalibur Warrant. (ECF No. 204 at 14.) Ciuca also argued in his reply  
11 filed in support of one of his objections that the affidavit filed to obtain the Excalibur  
12 Warrant contained certain false statements. (ECF No. 220 at 2-3.) In *Franks*, the Supreme  
13 Court established a two-prong test for overturning a judicial officer’s probable cause  
14 finding. First, there is a “presumption of validity with respect to the affidavit supporting the  
15 search warrant.” *Franks*, 438 U.S at 171. Second, a defendant is entitled to an evidentiary  
16 hearing on the validity of the affidavit only if he can make a “substantial showing” that: (1)  
17 the affidavit contains intentionally or recklessly false statements or misleading omissions  
18 and; (2) the affidavit cannot support a finding of probable cause without the false  
19 information or with the misleading omissions. *Id.* at 171-172.

20 The Ninth Circuit has articulated five requirements that a defendant must satisfy to  
21 warrant a *Franks* hearing: “(1) the defendant must allege specifically which portions of the  
22 warrant affidavit are claimed to be false; (2) the defendant must contend that the false  
23 statements or omissions were deliberately or recklessly made; (3) a detailed offer of proof,  
24 including affidavits, must accompany the allegations; (4) the veracity of only the affiant  
25 must be challenged; (5) the challenged statements must be necessary to find probable  
26 cause.” *United States v. Perdomo*, 800 F.2d 916, 920 (9th Cir. 1986) (quoting *United*  
27 *States v. Dicesare*, 765 F.2d 890, 894-95 (9th Cir. 1985)). In other words, a defendant

1 must show that the affidavit could not support a finding of probable cause even if it were  
2 purged of its falsities and/or supplemented by the omissions. See *Stanert*, 762 F.2d at  
3 780-81.

4 Here, the Court finds that a *Franks* hearing is not warranted because Ciuca has  
5 not even alleged or argued that Detective Jogodka included any intentionally false  
6 statements in the affidavit he filed to obtain the Excalibur Warrant. While some of the  
7 statements in that affidavit may have turned out to be false, Ciuca does not even argue  
8 that Detective Jogodka's statements were false at the time he made them. Nor has he  
9 alleged or argued that Detective Jogodka omitted anything from the affidavit. Further,  
10 Ciuca has not offered any proof to support his request for a *Franks* hearing. Thus, a  
11 *Franks* hearing is simply unnecessary with respect to the Excalibur Warrant.

12 In sum, the Court agrees with Judge Hoffman's recommendations, and adopts  
13 them as the findings of this Court.

#### 14 **V. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several  
16 cases not discussed above. The Court has reviewed these arguments and cases and  
17 determines that they do not warrant discussion as they do not affect the outcome of  
18 Defendants' motions.

19 It is therefore ordered that Judge Hoffman's recommendations (ECF Nos. 186,  
20 187) are adopted and the Court overrules Ciuca and Serban's objections.

21 It is further ordered that Ciuca's motion to suppress evidence (ECF No. 95) and  
22 motion to suppress statements (ECF No. 96) are denied.

23 It is further ordered that Serban's objection to Judge Hoffman's decision to deny  
24 her motion to join Ciuca's supplement to his motion to suppress statements (ECF No.  
25 170) is overruled.

26 It is further ordered that Serban's motion to suppress evidence (ECF No. 140) is  
27 denied.

1 DATED this 13<sup>th</sup> day of November 2018.

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4 MIRANDA M. DU  
5 UNITED STATES DISTRICT JUDGE  
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